

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Monode Marking Products, Inc.)	Case No. 1:18-cv-00016-DCN
)	
Plaintiff,)	Judge Donald C. Nugent
)	
v.)	
)	
Columbia Marking Tools, Inc.)	
)	
Defendant.)	

[Redacted] Declaration of David T. Movius, Esq.

I, David T. Movius, Esq. do hereby declare and testify as follows:

1. I am an adult person and am competent to make this declaration. I am lead trial counsel for Monode Marking Products, Inc. ("Monode") for this litigation. I make this Declaration based on my personal knowledge.

2. On October 8, 2019, I and counsel for Columbia Marking Tools, Inc. ("CMT") telephonically agreed to move jointly for extension of the remaining case deadlines. I was the only attorney for Monode on the call because Monode's other counsel of record, Mark Guinto, was [REDACTED].

3. The basis for this agreement was two-fold. First, the parties only had engaged in minimal fact discovery to that point, so each needs additional time to develop the record. And second, the parties believe that the Court's claim construction ruling could help facilitate settlement.

4. At the conclusion of the October 8, 2019 call, I understood that the parties had agreed to (1) jointly move the Court to extend all remaining case deadlines, including Monode's upcoming infringement contention deadline, (2) explore potential settlement

discussions in view of the Court's recent claim construction, including CMT potentially providing information to Monode informally to help Monode make a formal settlement demand, and (3) consider seeking an extension that is longer than they otherwise would need so they would have a period of time to discuss settlement without unnecessarily incurring fees and expenses litigating this case concurrent with their discussions.

5. On October 9, 2019, counsel for CMT sent an email purporting to confirm the parties' discussions the prior day. A true and accurate copy of the October 9, 2019 email from S. Auvil is attached as Exhibit 1 to this declaration. I understood this email as being consistent with our agreement to jointly seek an extension of all remaining case deadlines, with the only open question being how long of an extension the parties would jointly seek.

6. On October 10, 2019, I learned [REDACTED] that [REDACTED], who cares for [REDACTED] and who was recently diagnosed with [REDACTED], needed [REDACTED].

7. Since my father passed away last year, [REDACTED] [REDACTED] Although [REDACTED] [REDACTED] I live in Rocky River, Ohio, [REDACTED] [REDACTED] [REDACTED] [REDACTED] I therefore directed my immediate attention to helping [REDACTED] (including [REDACTED] [REDACTED]),

secure in my understanding that the parties had agreed to extend all of the remaining case deadlines—including Monode’s final infringement contention deadline.

8. Monode did not serve final infringement contentions on October 14, 2019, because the parties already had previously agreed to extend that deadline.

9. On October 25, 2019, CMT provided a draft joint motion for extension. Its draft motion, however, omitted Monode’s infringement contention deadline. This was the first time that I learned that CMT was taking the position that the parties’ agreement excluded Monode’s contention deadline. Monode responded that same day with a revised draft that included all post-claim construction deadlines, consistent with the parties’ agreement. CMT, however, refused to include Monode’s deadline on the basis that it had passed in the time since the parties made their initial agreement.

10. Hoping to avoid having to bring this matter before the Court, I responded on October 25, 2019, by representing represented to CMT’s counsel that I had relied on the parties’ October 8 agreement and candidly disclosing [REDACTED]

[REDACTED].

11. On October 26, 2019, CMT maintained its refusal to join in seeking an extension that included Monode’s contention deadline. That same day, I responded that Monode would seek relief from the Court if CMT did not reconsider its position and invited CMT to meet and confer regarding this matter.

12. A true and accurate copy of the parties’ email thread encompassing their correspondence between October 25, 2019, and October 28, 2019, is attached as Exhibit 2.

13. The parties met and conferred telephonically on October 28, 2019. During their call, CMT’s counsel reaffirmed that CMT would not agree to an extension that

includes Monode's infringement contention deadline. The call concluded with the parties reaffirming their agreement to extend all other post-claim construction deadlines and further agreeing to reconvene on October 31, 2019, after CMT's attorneys had an opportunity to further discuss this issue with their client. A true and accurate copy of the October 28, 2019 email from D. Movius and the response from S. Auvil confirming the results of their October 28, 2019 call is attached as Exhibit 3 to this declaration.

14. Monode and CMT met and conferred telephonically a second time regarding these issues on October 31, 2019, during which CMT maintained its refusal to include Monode's contention deadline in a joint motion for extension and Monode indicated that it therefore would be filing the present motion.

//

//

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

November 4, 2019

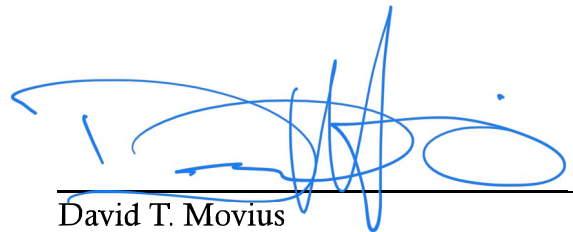

David T. Movius

Exhibit 1

Movius, David

From: Auvil, Steven M. <steven.auvil@squirepb.com>
Sent: Wednesday, October 09, 2019 12:08 PM
To: Movius, David; Prueter, David P.
Cc: Guinto, Mark
Subject: RE: Re: Monode v. CMT - Case 1:18-cv-00016-DCN--FRE 408 [I-AMS.FID4259347]

Hi David (Movius),

I thought we had a good and candid call yesterday.

As I mentioned, our client, CMT, is open to trying to reach a business solution to this matter. As we understand the claim, the dispute is in reality pretty small in the overall scheme of things. That is not to say that it is unimportant, only that it is the type of dispute that is susceptible to resolution. While CMT believes the court erred in its recent ruling and would be reversed on appeal, it is willing to set that to the side for the moment and "give peace a chance."

Please let know if your client is willing to engage in a settlement process in an effort to resolve the dispute and avoid the expenditure of additional monies in litigation. If so and there are specific categories of documents that you need from CMT to make a settlement demand, please let us know what those are, whether by reference to the discovery requests you served on CMT or otherwise. I think we should also agree on a timeline for producing the information followed by a settlement proposal from Monode and then a response from CMT.

Moreover, if your client would like to focus its energies on a settlement process for the moment (CMT is willing), then I suggest we ask the court to extend the deadlines to complete discovery. As you know, the current deadline for fact discovery is October 28 and the parties have taken little fact discovery to this point. As discussed, I suggested we ask the court to extend the deadline to complete fact discovery to late January 2020 (or February) to allow time for the settlement process to run its course and in light of the upcoming holidays. Please let me know if you are okay with this, and we can take a stab at preparing a joint motion.

Please get back to me with your thoughts as soon as you can, and feel free to call if that's easier for you.

Thank you.

My best,

Steve

Steven M. Auvil
Squire Patton Boggs (US) LLP
D.C. 1-202-626-6632
CLE 1-216-479-8023
M 1-216-570-5162

-----Original Message-----

From: Movius, David <dmovius@mcdonaldhopkins.com>
Sent: Monday, October 7, 2019 8:01 PM
To: Prueter, David P. <david.prueter@squirepb.com>
Cc: Auvil, Steven M. <steven.auvil@squirepb.com>; Guinto, Mark <mguinto@mcdonaldhopkins.com>; Dutra, Jeremy W. <jeremy.dutra@squirepb.com>
Subject: [EXT] Re: Monode v. CMT - Case 1:18-cv-00016-DCN

David,

I am available between 2 and 4:30 pm tomorrow. Will that work for you?

Save

On Oct 4, 2019, at 5:45 PM, Prueter, David P. <david.prueter@squirepb.com> wrote:

Hi Dave,

Please let us know your availability for a call. We are available after 4:00PM on Monday, and are generally available most of Tuesday.

Thanks,
David

David Prueter
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Mobile +1.330.206.0094

From: Prueter, David P.
Sent: Wednesday, October 2, 2019 12:17 PM
To: 'Movius, David' <dmovius@mcdonaldhopkins.com>
Cc: Auvil, Steven M. <steven.auvil@squirepb.com>; Guinto, Mark <mguinto@mcdonaldhopkins.com>; Dutra, Jeremy W. <jeremy.dutra@squirepb.com>
Subject: RE: Monode v. CMT - Case 1:18-cv-00016-DCN [I-AMS.FID4467773]

Thanks, Dave.

We are not available at either of those times. Please let us know your availability for next week.

Regards,
David

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Mobile +1.330.206.0094

From: Movius, David <dmovius@mcdonaldhopkins.com<mailto:dmovius@mcdonaldhopkins.com>>
Sent: Tuesday, October 1, 2019 4:54 PM
To: Prueter, David P. <david.prueter@squirepb.com<mailto:david.prueter@squirepb.com>>
Cc: Auvil, Steven M. <steven.auvil@squirepb.com<mailto:steven.auvil@squirepb.com>>; Guinto, Mark <mguinto@mcdonaldhopkins.com<mailto:mguinto@mcdonaldhopkins.com>>
Subject: [EXT] RE: Monode v. CMT - Case 1:18-cv-00016-DCN [I-AMS.FID4467773]

David,

I'm booked solid tomorrow. I'm available on Thursday between 9 and 11 am and on Friday between 1 and 4 pm. Will either of those windows work for you?

Dave

David T. Movius
Member

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F: 216.348.5474
dmovius@mcdonaldhopkins.com<mailto:dmovius@mcdonaldhopkins.com>
www.mcdonaldhopkins.com<http://www.mcdonaldhopkins.com>

600 Superior Avenue East
Suite 2100
Cleveland, OH 44114

<<https://businessadvocate.mcdonaldhopkins.com/>>
<image001.jpg>

From: Prueter, David P. [mailto:david.prueter@squirepb.com]
Sent: Tuesday, October 01, 2019 10:35 AM
To: Movius, David; Guinto, Mark
Cc: Auvil, Steven M.
Subject: Monode v. CMT - Case 1:18-cv-00016-DCN [I-AMS.FID4467773]

Dave and Mark,

Please let us know when you are available for a phone call to discuss the subject case.

Regards,
David

<image002.jpg>

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Exhibit 2

Movius, David

From: Prueter, David P. <david.prueter@squirepb.com>
Sent: Monday, October 28, 2019 11:20 AM
To: Movius, David
Cc: Auvil, Steven M.; Guinto, Mark
Subject: RE: Monode v. CMT - Proposed Joint Motion to Extend Remaining Deadlines [I-AMS.FID4467773]

Dave,

We will plan to call you at your office (216-430-2029) at 3:00PM to discuss. Please let me know if that time does not work or if there is a different number we should call.

David

David Prueter
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Mobile +1.330.206.0094

From: Movius, David <dmovius@mcdonaldhopkins.com>
Sent: Saturday, October 26, 2019 6:14 PM
To: Prueter, David P. <david.prueter@squirepb.com>
Cc: Auvil, Steven M. <steven.auvil@squirepb.com>; Guinto, Mark <mguinto@mcdonaldhopkins.com>
Subject: [EXT] RE: Monode v. CMT - Proposed Joint Motion to Extend Remaining Deadlines [I-AMS.FID4467773]

David,

Your position is disappointing—both professionally and personally. I hope you will reconsider, or else we will need to raise the matter with the Court immediately, and certainly before discussing settlement. If, however, you are going to maintain your current position, I am available on Monday between 2 and 3:30 pm to meet and confer before seeking the Court's assistance. Please let me know how you want to proceed.

Regards,

Dave

David T. Movius
Member

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From: Prueter, David P. [<mailto:david.prueter@squirepb.com>]
Sent: Saturday, October 26, 2019 6:01 PM
To: Movius, David

Cc: Auvil, Steven M.; Guinto, Mark

Subject: RE: Monode v. CMT - Proposed Joint Motion to Extend Remaining Deadlines [I-AMS.FID4467773]

Dave,

Thanks for the email. We are sorry to learn of your personal circumstances, and wish you well in dealing with them.

When Steve and I spoke with you on October 8, we discussed extending the dates for completing discovery and did not discuss the exchange of contentions. You said you would talk to your client about the proposed discovery extension. Steve's confirming email likewise says nothing about extending the deadline for contentions. We did not receive a response to that email and, indeed, thought your client was not interested in extending discovery. And this is why we served responses to discovery requests and deposition notices.

Having said all of this, the joint motion to extend the schedule, as proposed, allows the parties to move forward with discussing settlement. It's not a good use of either parties' resources to argue over something that is hypothetical—whether your client would be justified in trying to serve late final infringement contentions. You can maintain your position on that issue, and we can maintain ours; there is no need to burden the court with resolving this dispute at this point.

Let us know if you want to discuss this.

Best,
David

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Mobile +1.330.206.0094

From: Movius, David <dmovius@mcdonaldhopkins.com>

Sent: Friday, October 25, 2019 9:47 PM

To: Prueter, David P. <david.prueter@squirepb.com>

Cc: Auvil, Steven M. <steven.auvil@squirepb.com>; Guinto, Mark <mguinto@mcdonaldhopkins.com>

Subject: [EXT] RE: Monode v. CMT - Proposed Joint Motion to Extend Remaining Deadlines [I-AMS.FID4467773]

David,

Before this goes too far, I think some perspective might be helpful.

When we talked on October 8—before Monode's final infringement contentions were due—we verbally agreed to extend the case deadlines at Columbia's suggestion. Since then, I have been primarily focused on [REDACTED], who [REDACTED], has [REDACTED] and is responsible for [REDACTED], after [REDACTED]. Given these circumstances, I would hope that we can agree to extend all deadlines consistent with what we previously discussed. If not, we will need to promptly seek the Court's assistance to resolve this issue.

Thank you in advance for your consideration and understanding, and I look forward to your response.

Regards,

Dave

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From: Guinto, Mark
Sent: Friday, October 25, 2019 8:15 PM
To: Prueter, David P.
Cc: Auvil, Steven M.; Movius, David
Subject: Re: Monode v. CMT - Proposed Joint Motion to Extend Remaining Deadlines [I-AMS.FID4467773]

David,

We do not agree. We will agree to extend the discovery deadline but cannot agree to the other extensions without also extending the final infringement contentions.

Further, we do not understand how it makes sense to extend all deadlines except for the final infringement contentions.

Regards,
Mark

Sent from my Sprint Samsung Galaxy S9.

----- Original message -----

From: "Prueter, David P." <david.prueter@squirepb.com>
Date: 10/25/19 7:03 PM (GMT-05:00)
To: "Guinto, Mark" <mguinto@mcdonaldhopkins.com>
Cc: "Auvil, Steven M." <steven.auvil@squirepb.com>, "Movius, David" <dmovius@mcdonaldhopkins.com>
Subject: RE: Monode v. CMT - Proposed Joint Motion to Extend Remaining Deadlines [I-AMS.FID4467773]

Thanks, Mark.

We cannot agree to retroactively extend a deadline that has passed. I've added a footnote to the table to this effect. Please let me know if we have your authorization to file.

Thanks,
David

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From: Guinto, Mark <mguinto@mcdonaldhopkins.com>
Sent: Friday, October 25, 2019 4:25 PM
To: Prueter, David P. <david.prueter@squirepb.com>
Cc: Movius, David <dmovius@mcdonaldhopkins.com>
Subject: [EXT] RE: Monode v. CMT - Proposed Joint Motion to Extend Remaining Deadlines

Hi David,

I just spoke with Dave. We have some minor edits to include the final infringement contentions. I included a redlined word copy and a redlined PDF. If these are acceptable, you have authorization to sign for Dave.

Regards,
Mark

Mark Guinto
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From: Prueter, David P. [<mailto:david.prueter@squirepb.com>]
Sent: Friday, October 25, 2019 4:11 PM
To: Guinto, Mark
Subject: FW: Monode v. CMT - Proposed Joint Motion to Extend Remaining Deadlines

Hi Mark – Will you and/or Dave be able to respond to this before the end of the day so that we can get it on file with the Court before Monday?

Thanks,
David


David Prueter
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From: Prueter, David P.
Sent: Friday, October 25, 2019 1:02 PM
To: 'Movius, David' <dmovius@mcdonaldhopkins.com>; 'Guinto, Mark' <mguinto@mcdonaldhopkins.com>
Cc: Auvil, Steven M. <steven.auvil@squirepb.com>
Subject: Monode v. CMT - Proposed Joint Motion to Extend Remaining Deadlines [I-AMS.FID4467773]

Hi Mark,

As we discussed a few minutes ago, attached is the proposed motion to extend the remaining deadlines. Please let me know if you have any changes or if it is ok to e-sign and file.

Thanks,
David

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Exhibit 3

Movius, David

From: Auvil, Steven M. <steven.auvil@squirepb.com>
Sent: Monday, October 28, 2019 4:06 PM
To: Movius, David; Prueter, David P.
Cc: Guinto, Mark
Subject: RE: Monode v. Columbia [I-AMS.FID4467773]

David,

Yes, this confirms our understanding. Please consider whether we should file the joint motion we prepared as it essentially echoes our agreement and it would be timely if filed today.

Steve

Steven M. Auvil
Squire Patton Boggs (US) LLP
D.C. 1-202-626-6632
CLE 1-216-479-8023
M 1-216-570-5162

From: Movius, David <dmovius@mcdonaldhopkins.com>
Sent: Monday, October 28, 2019 3:37 PM
To: Auvil, Steven M. <steven.auvil@squirepb.com>; Prueter, David P. <david.prueter@squirepb.com>
Cc: Guinto, Mark <mguinto@mcdonaldhopkins.com>
Subject: [EXT] Monode v. Columbia

Steve & David,

Following up on our phone call, the following summarizes our understanding of what we agreed to today:

1. The parties are agreeing to extend fact discovery through the end of February, with all deadlines that remain open as of today that likewise are keyed to the date of the claim construction ruling being similarly extended.
2. The parties will continue to discuss potential resolution to their disagreement regarding the deadline for Monode's final infringement contentions.
3. Neither party will file anything regarding the deadline for Monode's final infringement contentions with the Court before Friday, November 1.
4. The parties agree that this agreement is without prejudice to their respective rights and remedies with respect to the deadline for Monode's final infringement contentions.
5. We will reconvene to discuss these issues on Thursday, October 31, 2019, at 10 am.

Please confirm whether this accurately summarizes your understanding of our agreement today.

Regards,

Dave

David T. Movius
Member

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